

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Darren Simmons, )  
Petitioner, ) No. 5:13-cv-2120-RMG  
v. )  
Warden John Pate, )  
Respondent. )  
\_\_\_\_\_  
)

**ORDER**

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending the Court grant Respondent’s motion for summary judgment. (Dkt. No. 30). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Petitioner, a state prisoner proceeding pro se, filed this petition pursuant to 28 U.S.C. § 2254. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this matter was automatically referred to a Magistrate Judge for pretrial handling. Respondent then filed a motion for summary judgment. (Dkt. No. 17). Petitioner then filed a response in opposition to the motion. (Dkt. No. 22). The Magistrate Judge then issued the present R&R. (Dkt. No. 30). Petitioner failed to file timely objections to the R&R.

**Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made.

Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

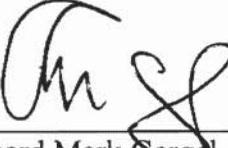
### **Discussion**

After review of the record and the R&R, the Court finds the Magistrate Judge applied sound legal principles to the facts of this case and therefore adopts the R&R as the order of the Court. The Court agrees that Petitioner has failed to exhaust his state court remedies as required by 28 U.S.C. § 2254(b)(1).

### **Conclusion**

As set forth above, the Court adopts the R&R as the order of the Court. (Dkt. No. 30). Accordingly, the Court grants Respondent’s motion for summary judgment. (Dkt. No. 17).

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

April 1, 2014  
Charleston, South Carolina